IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition 10236 of 2005

Date of decision: 3.8.2006

Tarlok Singh and anr …Petitioners

Versus

State of Punjab and others …Respondents

CORAM: HON'BLE MR JUSTICE S.S.NIJJAR.
HON'BLE MR JUSTICE S.S.SARON.

Present: Mr DS Patwalia, Advocate, for the petitioners.
Mrs Charu Tuli, Sr DAG Punjab, for the respondents.

S.S. SARON, J.

Petitioners – Tarlok Singh and Raj Rani seek quashing of the orders dated 11.2.2005 (Annexure P12) and 31.5.2004 (Annexure P10), in pursuance of which their claim for the grant of pension has been declined on the ground that the service rendered by them in privately managed aided school is not to be counted for the grant of pensionary benefits. Petitioner No.1 – Tarlok Singh was appointed as Headmaster in BLD Janta High School, Jahidpur Kamlooh w.e.f. 1.9.1970. The post on which he was appointed was an aided post receiving grant-in-aid from the Punjab Government. Petitioner No.2 – Smt Raj Rani was appointed as JBT teacher in the BLD Janta Middle School on 18.9.1967. The said appointment was also against an aided post receiving grant-in-aid. Both the petitioners had been continuously depositing their contributory provident fund.

The petitioners claim pension for the period of service rendered by them in government aided privately managed institutions. In

respect of aided posts, a pension Scheme was formulated by the Punjab government, under Rule 22-A of the Punjab Privately Managed Recognised Schools Employees (Security of Service) Rules, 1981, which Scheme is known as the Punjab Privately Managed Recognized Aided School Recruitment Benefits Scheme, 1992 (1992 Scheme – for short) which was made effective from 10.2.1992. In terms of the said 1992 Scheme, the government took a decision that employees of government aided schools would be given pension in lieu of the contributory provident fund. The teachers working in the respective privately managed recognized aided schools were asked to give their options as to whether they would like to continue in the existing contributory provident fund scheme or opt for the retirement benefits admissible under the 1992 Scheme. The petitioners were desirous of getting benefits under the 1992 Scheme and had given their necessary options in this regard. The BLD Janta High School, Jahidpur Kamlooh in which petitioners were working on aided posts was taken over by the Punjab Government in pursuance of gift deed dated 10.1.1997. (Annexure P4). Condition No.4 of the said gift deed provided that the employees who were appointed and working as regular employees against the aided posts would get the benefit of previous service rendered by them in the privately managed aided schools for the purpose of grant of pension and pensionary benefits under the 1992 Scheme. The petitioners were given fresh appointments after the school was taken over by the Punjab government. Smt Raj Rani – petitioner No.2 was offered appointment on purely temporary basis for six months subject to final approval of the concerned recruitment agency. In terms of order dated 23.7.2003, the services of Raj Rani – petitioner No.2 were regularized w.e.f. 19.2.1999. The services of Tarlok Singh - petitioner No.1 were also

regularized vide order dated 11.8.2003. On superannuation of the petitioners, they have not been given the benefit of pension on the ground that service rendered in privately managed school is not to be counted for pension.

Reply has been filed by the respondents in which the material aspects as regards the service rendered by the respective petitioners have not been disputed. It is, however, stated that BLD Janta High School, Jahidpur Kamlooh was taken over by the government w.e.f. 19.2.1999 on the terms and conditions as stated in the said order dated 19.2.1999 (Annexure R1) of the DPI (Schools). The petitioners were treated as fresh appointees in government service on 19.2.1999. It is further stated that as per condition No.1 of the memo dated 26.5.1998 (Annexure R2) of the State Government, the staff was not to be eligible for any benefit including pay, seniority, gratuity, pension and other retirement benefits whatsoever on the basis of their previous service rendered under the private management. Besides, as per condition No.4 of the said letter dated 26.5.1998 (Annexure R2), the government was not liable for any liability pertaining to the period prior to taking over of the school. Strong reliance is placed on the judgment of the Hon'ble Suprme Court in ***State of Punjab v. Dev Dutt Kaushal*** AIR 1996 SC 85, to contend that the period rendered in the privately managed aided school is not to be counted towards pension. Therefore, it is prayed that the writ petition merits dismissal.

Learned counsel for the petitioners submits that the period of service rendered by the petitioners in the privately managed aided institutions is to be counted as qualifying service towards pension in terms of gift deed (Annexure P4) executed by the government with the management of the school. It is contended that the subsequent letters issued

by the government cannot supercede the gift deed (Annexure P4) which contain a specific provision for the grant of pensionary benefits to the petitioners. Besides, the petitioners in any case are entitled for the benefit of pension even on the basis of the 1992 Scheme.

In response, learned Senior DAG Punjab has opposed the grant of pensionary benefits and has contended that the letters provided for taking over the institutions envisage that the previous service rendered by the petitioners is not to be counted towards pensionary benefits. Therefore, their claim has been rightly declined.

We have given our thoughtful consideration to the matter.

The factual position as is borne out from the pleadings of the parties is not in dispute. The petitioners had rendered service in the BLD Janta High School, Jahidpur Kamlooh which is an aided institution. Tarlok Singh had rendered service as Headmaster against an aided post w.e.f. 1.9.1970 till the school was taken over by the government in pursuance of the gift deed dated 10.1.1997. Smt Raj Rani had rendered service w.e.f. 18.9.1967 on an aided post till the school was taken over by the government on 10.1.1997 in terms of the aforesaid gift deed. The respondents have declined the payment of pension on the ground that the petitioners have not completed 10 years of regular qualifying service. However, it is not in dispute that in case the period of service rendered by the petitioners in the privately managed aided institution is counted towards qualifying service for pension, they would have the requisite period of service so as to be entitled for the grant of pension. The pension has been declined in view of the judgment of the Supreme Court in ***State of Punjab*** v. ***Dev Dutt Kaushal*** (supra) as also in view of the letters dated 26.5.1998 (Annexure R2) and 19.2.1999 (Annexure R1) issued by the respondents after the

taking over of the institution. This in fact is contrary to the very terms of the gift deed which was executed between the donor management and the donee. The gift deed was executed on 10.1.1997 (Annexure P4). Clause 4 of the said gift deed reads as under:-

> "The members of the staff to whom the government will take over, they will be considered as new appointees in the government service. But the said condition will not apply to the other staff working against grant-in-aid posts. The services of such staff rendered in the aided schools is to be counted for the purpose of pension because they have deposited their share of GP Fund along with interest in the Government Treasury as per government Notification No.GSR 10/PM/RSE(SS)R-81/R-22-A/92 dated 10.2.1992 and they are to be given the benefit of service rendered in aided school as per the government employees opting for pension as per the above said notification. The other unaided staff will not get any benefit of any time of their previous service and their seniority will be counted as per rules below the old employees (Emphasis added)."

In the face of the said condition as contained in the gift deed entered into between the parties, the subsequent letter issued by the State Government on 26.5.1998 (Annexure R2) which inter alia enjoins that the government shall not be liable for any liability pertaining to the period prior to the taking over of the school and that all such liabilities would be the responsibility of the management, is meaningless. The letter dated 19.2.1999 (Annexure R1) was issued by the DPI (Schools), Punjab which inter alia records that all the members of the staff to be taken over will be

treated as fresh entrants in government service and that no benefits whatsoever of the previous service would be given except the pay fixation and that also as per government letter dated 11.1.1981 would also disentitle the petitioners to the grant of pensionary benefits. This is also meaningless for the reason that condition No.4 of the gift deed dated 10.1.1997 specifically provides for the payment of pension to the staff working against grant-in-aid posts. Therefore, the ratio of the judgment in ***State of Punjab*** v. ***Dev Dutt Kaushal*** (supra) would not apply in the case in hand as in the said case, the gift deed by which the private college in the said case had been taken over by the government specifically recorded that the service rendered in the college under private management will not be counted for pension whereas the gift deed in the present case records that it would be counted towards pension. Therefore, the letters issued by the government on 26.5.1998 (Annexure R2) and by the DPI (Colleges) on 19.2.1999 (Annexure R1) are quite contrary to the recitals as recorded in the gift deed (Annexure P4). In fact, in terms of gift deed, it is specifically recorded that the staff working on aided post had deposited their share of CPF along with interest in the government treasury as per the 1992 Scheme dated 10.2.1992 and they are to be given the benefit of service rendered in aided school as per government employees opting for pension.

Besides, it may be noticed that in fact the 1992 Scheme was applicable to the teaching employees working against aided posts. Had the school where the petitioners were working not been taken over by the government, the petitioners would still be entitled for the grant of pension, in view of the said 1992 Scheme. Clause 3 of the 1992 Scheme provides for the application of the Scheme and Clause 5 provides for the benefits under the Scheme. Clauses 3 and 5 read as under:-

"3(1) Application: This scheme shall apply to all the employees, excepting those who do not opt in terms of clause 3 (subject to the condition that the Managing Committee of a Privately Managed Recognised Aided School executes an agreement in Form-1 duly supported by a resolution of the Managing Committee to abide by the provisions of this Scheme and instructions, issued by the Department from time to time), who –

(a) are appointed to the aided posts on or after the fifth day of February, 1987; and

(b) were working on aided posts immediately before the fifth day of February, 1987 and continue to work as such after that date;

Provided that the employees who were appointed to the aided posts;

(i) before the fifth day of February, 1987 and who have attained or will attain the age of superannuation on or after that date; and

(ii) on or after the fifth day of February, 1987 but before the 16th day of January 1991;

shall have the right to opt within a period of four months from the date of publication of this scheme to be or not to be governed by the provisions of the scheme.

(2) The scheme shall not apply to –

(i) the employees appointed on part time basis against posts;

(ii) the employees who retired from the aided posts before the 5th day of February, 1987 and the employees who

attained the age of superannuation before the fifth day of February 1987 and were re-employed on aided posts;

(iii) the employees who are governed by the Contributory Provident Fund; and

(iv) the employees employed on a leave gap arrangement on ad hoc basis.

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5. **Benefits under the Scheme**: The following retirement benefits shall be granted under the Scheme, namely:

a) Superannuation pension;

b) Death-cum-retirement gratuity;

c) Family pension;

d) Invalid pension;

e) Compensation pension;

f) Compassionate allowance; and

g) Retiring pension."

The petitioners admittedly comply with the conditions provided for the application of the 1992 Scheme. Therefore, assuming that if the school of the petitioners had not been taken over by the State Government in terms of the gift deed dated 10.1.1997 (Annexure P4), they would still have got the benefits of the 1992 Scheme. In Dev Dutt Kaushal's case (supra), a reference was made to the 1992 Scheme whereby the teachers in the privately aided schools would be entitled for the grant of pension. It was observed that if any of the respondents in the appeals before the Supreme was entitled to any benefit under the said Scheme, he would be entitled to claim the same according to law. As already noticed, the

petitioners have been in service of the BLD Janta High School, Jahidpur Kamlooh since 1.9.1970 and 18.9.1967 respectively till the school was taken over on 10.1.1997. At this stage, to say that the said period of service has been completely washed away for the purpose of pension, would amount to grave injustice. The petitioners admittedly comply with all the necessary requirements under the 1992 Scheme and had their school not been taken over, they, in any case, would have been entitled for pension in terms thereof. The petitioners had during their service also exercised their necessary options for the 1992 Scheme. Therefore, it cannot be said that they would not be entitled for pension in view of the letters dated 26.5.1998 (Annexure R2) and 19.2.1999 (Annexure R1) issued by the respondents. The stand of the respondents being contrary to the conditions of the gift deed dated 10.1.1997 (Annexure P4) and also the 1992 Scheme is unsustainable in law and the orders dated 11.2.2005 (Annexure P12) and 31.5.2004 (Annexure P10) whereby their claim for pension has been declined, are liable to be set aside and quashed.

For the fore going reasons, the writ petition is allowed, the impugned orders dated 11.2.2005 (Annexure P12) and 31.5.2004 (Annexure P10) in terms of which the grant of pension to the petitioners has been declined, are quashed and it is directed that the respondents shall grant the petitioners the pension admissible to them including arrears of pension, in accordance with law. However, their claim for interest on the arrears, in the peculiar facts and circumstances of the case, is declined. The respondents shall re-calculate the pension and pay the same to the petitioners preferably within three months of the receipt of a certified copy of this order.

There shall, however, be no order as to costs.

(S.S.NIJJAR)
JUDGE

3.8.2006. (S.S.SARON)
ASR JUDGE